

Philip S. Van Der Weele, OSB #863650  
Email: phil.vanderweele@klgates.com  
Elizabeth H. White, OSB #204729  
Email: elizabeth.white@klgates.com  
K&L GATES LLP  
One SW Columbia Street, Suite 1900  
Portland, Oregon 97204  
Telephone: (503) 228-3200/Facsimile: (503) 248-9085

*Attorneys for Defendants Pitney Bowes Inc.,  
Pitney Bowes Global Financial Services LLC,  
The Pitney Bowes Bank, Inc., and Wheeler  
Financial from Pitney Bowes Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

PACIFIC OFFICE AUTOMATION, INC., an  
Oregon corporation,

Plaintiff,

v.

PITNEY BOWES, INC., a Delaware  
corporation; PITNEY BOWES GLOBAL  
FINANCIAL SERVICES, LLC, a Delaware  
limited liability company; THE PITNEY  
BOWES BANK, INC., a federal banking  
institution; WHEELER FINANCIAL FROM  
PITNEY BOWES, INC., a Delaware corp.;

Defendants.

Case No. 3:20-cv-00651-AC

**JOINT STATUS REPORT FOR  
DECEMBER 14, 2021  
STATUS CONFERENCE**

In anticipation of the Status Conference set in this case for December 14, 2021, undersigned counsel for the parties have met and conferred and agreed to file this Joint Status Report.

## **1. Status of Defendants' Three Discovery Motions**

The status of the three discovery motions brought by defendants and addressed in the September 7 Joint Status Report is as follows:

- a. Renewed Motion to Compel: This Motion (Doc. 67) remains unresolved, and the Court has scheduled oral argument on this motion for December 14, 2021 (Doc. 86).
- b. Motion to Modify Stipulated Protective Order: The parties reported that they had resolved this motion (Doc. 69) without the need for the Court's intervention, and the Court therefore denied the motion as moot (Doc. 86).
- c. Third Motion to Compel: The parties are close to resolving the Third Motion to Compel (Doc. 71) without the Court's involvement, and they request that the Court continue to defer ruling on this motion. The parties will advise the Court on December 14 whether they have resolved this motion or whether they will need the Court to resolve it at some point after December 14.

## **2. Potential Fourth Motion to Compel**

Defendants served their Fourth Requests for Production on Plaintiff on August 23, 2021. To date, plaintiff has not produced either written responses to these requests or any responsive documents. However, the parties have conferred about the requests and may be able to resolve some or all of them. Defendants reserve their right to file a motion to compel responses to these requests, including, but not limited to, on the basis that Plaintiff failed to serve responses and objections to the requests. The parties do not presently anticipate that additional motion practice will be necessary but do not waive any rights at this time.

### 3. Case Schedule Following the Completion of Fact Discovery

As a result of extensive discussions consistent with the Court's Order in Doc. 59, the parties have reached an agreement, subject to the Court's approval, on a case schedule for expert discovery and summary judgment motions following completion of fact discovery. The proposed schedule bifurcates expert disclosures/depositions and dispositive motions into a liability phase and a contingent damages phase. Because (as discussed in more detail in point 4), the parties have not yet reached an agreement on an end date for completion of fact discovery, the proposed schedule set forth in the chart that follows shows the intervals between events rather than actual dates. The parties hope that by the time of the next status conference requested in point 4, they will have been able to reach an agreement on a closing date for fact discovery and hence be able to present to the Court a chart with at least some actual dates for Phase 1 of the Proposed Schedule.

<b>Phase 1: Expert Reports/Disclosures, Expert Depositions, and Dispositive Motions on All <u>Liability</u> Issues</b>	
<b>Event</b>	<b>Deadline</b>
Deadline for all Phase 1 expert reports and expert disclosures (FRCP 26(a)(2)(B) and 26(a)(2)(C)), covering all <u>liability</u> issues as to which a party has the burden	60 days after a to-be-agreed-upon (or court-ordered) date for the completion of fact discovery.

Completion of depositions of all Phase 1 experts who made reports/disclosures under either FRCP 26(a)(2)(B) and 26(a)(2)(C))	30 days after expert reports/disclosures served  (Note: The party on whose behalf any expert report or disclosure was made must make that expert available for a deposition within 30 days of the submission of the report/disclosure)
Phase 1 Rebuttal expert reports/disclosures ((FRCP 26(a)(2)(B) and 26(a)(2)(C))	60 days after last-completed Phase 1 expert deposition
Depositions of Phase 1 Rebuttal Experts	30 days after Phase 1 rebuttal expert reports/disclosures  (Note: The party on whose behalf any rebuttal expert report or disclosure was made must make that expert available for a deposition within 30 days of the submission of the report/disclosure)
Deadline for filing Dispositive Motions for Phase 1 - all liability issues	60 days after last deposition of a Phase 1 rebuttal expert

<b>Phase 2: Expert Reports/Disclosures, Expert Depositions, and Dispositive Motions on All <u>Damage</u> Issues (Phase 2 is contingent on Phase 1 summary judgment motions having been denied)</b>	
<b>EVENT</b>	<b>DEADLINE</b>
Deadline for all Phase 2 expert reports and expert disclosures ((FRCP 26(a)(2)(B) and 26(a)(2)(C)) on <u>damages</u> issues as to which a party has the burden	30 days after Article III Judge or Magistrate Judge to whom the parties have consented to serve as an Article III Judge rules on Phase 1 Dispositive Motions

Completion of depositions of all Phase 2 experts who made reports/disclosures under either FRCP 26(a)(2)(B) and 26(a)(2)(C))	30 days after expert reports/disclosures  (Note: The party on whose behalf any expert report or disclosure was made must make that expert available for a deposition within 30 days of the submission of the report/disclosure)
Phase 2 Rebuttal expert reports/disclosures ((FRCP 26(a)(2)(B) and 26(a)(2)(C)) (Damages)	60 days after last-completed Phase 2 expert deposition
Depositions of Phase 2 Rebuttal Experts	30 days after rebuttal expert reports/disclosures  (Note: The party on whose behalf any rebuttal expert report or disclosure was made must make that expert available for a deposition within 30 days of the submission of the report/disclosure)
Deadline for filing Dispositive Motions in “Phase 2” - all damage issues	60 days after the last deposition of a Phase 2 rebuttal expert

#### **4. Deadline for Completion of Fact Discovery and Request for Another Status Conference**

Without either party’s waiving (a) any rights as to objections already made to discovery requests or (b) any timely future objections to be made to outstanding or future discovery requests, the parties requested in their last Joint Status Report (Doc. 82) that the September 22, 2021, deadline for completion of fact discovery (per Doc. 62) be stricken.

The parties agree that a deadline for the completion of fact discovery should not be set until after 1) the Court rules on Defendants’ Renewed Motion to Compel and Plaintiff has complied with whatever it is ordered to do; 2) the parties report whether they were

able to resolve Defendants' pending Third Motion to Compel; and, if they were not, until outstanding issues related to the Third Motion are resolved; and 3) Defendants determine whether they will need to file a Fourth Motion to Compel, and, if so, until it is fully resolved. The parties request that the Court hold a further status conference in approximately 60 days (on or around January 14, 2022) to determine whether it is feasible at that time to establish a date for the close of fact discovery and definitive dates for events following the completion of fact discovery consistent with the chart above.

**5. Effect of Striking of Deadline for Completion of Fact Discovery on Deadline for Serving Additional Written Discovery Requests**

Plaintiff's Position: The recent meet and confer attempts have highlighted both sides' belief that some (albeit limited) additional fact discovery is necessary, and Plaintiff believes that the parties have been making all good faith efforts to resolve discovery matters without the need for any additional formal requests. Plaintiff agrees to cooperate in good faith and to attempt all means to achieve discovery without delay or court intervention.

Defendants' Position: Consistent with what they said in the September 7, 2021 Joint Status Report, Defendants, by having previously agreed to strike the September 22, 2021, deadline for completion of fact discovery and by proposing that fact discovery not be closed prior to the resolution of the Renewed, the Third, and the potential Fourth Motions to Compel, did not and do not also agree to automatically extend the deadline for the serving any additional written discovery requests, which Defendants contend was August 23, 2021, per L.R. 16-2(e)(4). Plaintiff has propounded additional requests to Defendants, at least some of which Defendants contend are not timely. Without waiving any objections, Defendants nonetheless are working with Plaintiff on these requests to resolve them. Defendants continue to reserve all objections to any additional requests from Plaintiff (which requests must be in writing), including the objection of

untimeliness.

Respectfully submitted this 7<sup>th</sup> day of December, 2021.

BODYFELT MOUNT LLP

MANOLIO & FIRESTONE, PLC

By: s/ Jamison R. McCune  
Jamison R. McCune, OSB #135547  
Email: [mccune@bodyfeltmount.com](mailto:mccune@bodyfeltmount.com)  
Phone: (503) 243-1022

By: s/ Veronica L. Manolio  
Veronica L. Manolio, AZSB # 020230  
Email: [vmanolio@mf-firm.com](mailto:vmanolio@mf-firm.com)  
Phone: (480) 222-9100

*Local Attorneys for Plaintiff*

*Pro Hac Vice Attorneys for Plaintiff*

K&L GATES LLP

By: s/ Philip Van Der Weele  
Philip Van Der Weele, OSB # 863650  
Email: [phil.vanderweele@klgates.com](mailto:phil.vanderweele@klgates.com)  
Phone: (503) 228-2300

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing to be served upon Plaintiff's counsel of record to this matter via the Court's CM/ECF System:

Veronica L. Manolio, AZSB # 020230  
MANOLIO & FIRESTONE, PLC  
8686 E. San Alberto Dr., Suite 200  
Scottsdale, Arizona 85258  
Email: vmanolio@mf-firm.com  
Phone: (480) 222-9100

*Pro Hac Vice Attorneys for Plaintiff*

Jamison R. McCune, OSB #135547  
Eric (Skip) Winters, OSB #944669  
BODYFELT MOUNT LLP  
319 SW Washington St., Suite 1200  
Portland, OR 97204  
Tel: 503-243-1022  
Email: mccune@bodyfeltmount.com

*Local Attorney for Plaintiff*

DATED this 7th day of December, 2021.

K&L GATES LLP

By: s/ Philip Van Der Weele  
Philip Van Der Weele, OSB #863650